

PUBLIC CHAPTER NO. 250

HOUSE BILL NO. 1063

By Representatives Maggart, Bibb, McDonald

Substituted for: Senate Bill No. 1192

By Senator Black

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 221, relative to wastewater treatment authorities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 221, is amended by adding the following sections as a new part thereto:

68-221-1301.

This part shall be known and may be cited as the "Regional Water and Wastewater Treatment Authority Act".

68-221-1302.

(a) It is declared that water and wastewater treatment authorities created pursuant to this part shall be public and governmental bodies acting as agencies and instrumentalities of the creating and participating governmental entities; and that the acquisition, operation and finance of water and wastewater treatment works by such authorities is declared to be for a public and governmental purpose and a matter of public necessity.

(b) The property and revenues of the authority, or any interest therein, are exempt from all state, county and municipal taxation.

68-221-1303.

As used in this part, unless the context otherwise requires:

(1) "Authority" means a water and wastewater treatment authority created pursuant to the provisions of this part;

(2) "Board" means the board of commissioners of an authority;

(3) "Bonds" includes notes, interim certificates or other obligations of an authority;

(4) "Creating governmental entity" means any city, metropolitan government, county or utility district that creates an authority pursuant to this part;

(5) "Executive officer" means the mayor, county mayor or other chief executive officer of any creating or participating governmental entity;

(6) "Governing body" means the chief legislative body of any creating or participating governmental entity;

(7) "Participating governmental entity" means any utility district, metropolitan government, city, town or county; which utility district, city, town or county, pursuant to a resolution of its governing body, shall have sold, leased, dedicated, donated or otherwise conveyed its water or wastewater treatment works, or both, or a portion thereof, to the authority for operation by the authority in order to make such treatment works an operational part of its treatment works;

(8) "State" means the state of Tennessee; and

(9) "Treatment works" means any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature to restore and maintain the chemical, physical and biological integrity of the state's waters, or any devices and systems used in the treatment and distribution of water, including intercepting sewers, outfall sewers, sewage collection systems, water storage facilities, water transmission lines, pumping, power and other equipment, and their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities, and any works.

68-221-1304.

(a) Any contiguous city, metropolitan government, county or utility district may create a water and wastewater treatment authority in the manner provided for in this part.

(b)

(1) The governing body of the creating governmental entity shall adopt, and its executive officer

shall approve, a resolution calling a public hearing on the question of creating an authority.

(2) Notice of the date, hour, place and purpose of the hearing shall be published at least once each week for two (2) consecutive weeks in a newspaper of general circulation in the creating governmental entity, the last such publication to be at least one (1) week prior to the date set for the hearing.

(c) The hearing shall be had before the governing body and all interested persons shall have an opportunity to be heard.

(d)

(1) After the hearing, if the governing body determines that the public convenience and necessity require the creation of an authority, it shall adopt, and its executive officer shall approve, a resolution or an ordinance so declaring and creating an authority, which resolution or ordinance shall also designate the name and principal office address of the authority.

(2) A certified copy of the resolution or ordinance shall be filed with the secretary of state, along with the resolution approving the appointment of the board of commissioners as provided for in § 68-221-605, and upon such adoption and filing, the authority shall constitute a body politic and corporate, with all the powers provided in this part.

(e)

(1) Whenever an authority is created under this part, the creating governmental entity and any participating governmental entity shall enter into an agreement with the authority for the orderly transfer to the authority of the treatment works properties, functions, service area and outstanding obligations.

(2) The agreement may include provisions for the reimbursement of any such governmental entity for its obligations issued for treatment works.

68-221-1305.

(a)

(1) The governing body of the authority shall be a board of commissioners appointed by the executive officer

of the creating governmental entity and approved by its governing body.

(2) The board of commissioners shall include a person of good standing and reputation.

(b) If there are one (1) or more participating governmental entities, one (1) member of the board shall be appointed by the executive officer of each participating governmental entity and approved by its governing body giving the board a total membership equal to the number of participating governmental entities.

(c) Commissioners first appointed to the board shall be appointed for terms of one (1), two (2), three (3), four (4) and five (5) years, respectively, but thereafter each commissioner shall be appointed for a term of five (5) years. If a board has more than five (5) members each additional member shall be appointed for a term of five (5) years. A commissioner may be reappointed at the end of such commissioner's term.

(d)

(1) Any vacancy by reason of nonresidence, incapacity, resignation or death shall be filled in like manner for the unexpired term.

(2) A commissioner's term shall continue until the appointment and qualification of such commissioner's successor.

(3) A commissioner may be removed from office by a two-thirds (2/3) vote of the governing body of the governmental entity which approved the commissioner's appointment, but only after notice of the cause of the removal is served upon the commissioner, and only after the commissioner is granted an opportunity for a public hearing on such cause.

(e)

(1) The board shall elect from among its members a chair and vice chair, each of whom shall continue to be voting members, and shall adopt its own bylaws and rules of procedure.

(2) The presence of commissioners having a majority of the voting strength of the commissioners shall constitute a quorum for the transaction of business.

(3) Except as expressly otherwise specified in this part, all powers herein granted in this part to an authority shall be exercised by the board.

(4) Commissioners may receive compensation and shall be reimbursed for necessary expenses incurred in the performance of their official duties.

(5) An authority shall be subject to the jurisdiction of the water and wastewater financing board in accordance with this chapter; provided however, that the environmental statutes in titles 68 and 69 currently administered by the department of environment and conservation shall apply to the activities of the authority in the same manner as such statutes would apply to the activities of any local government.

68-221-1306.

(a) The board shall appoint an executive director, who shall be the chief executive and administrative officer of the authority, and who shall enter into a contract with the executive director establishing such director's salary and term of office.

(b) The executive director is responsible for all personnel matters related to the authority including, but not limited to, recruitment, discipline and compensation.

(c)

(1) The executive director shall prepare annually the operating budget of the authority and submit the same to the board for approval at least sixty (60) days prior to the beginning of the fiscal year.

(2) If such budget has not been acted upon by the board on the first day of the fiscal year, it shall then automatically go into effect.

(d) The executive director shall also submit such periodic reports to the board as it may direct.

(e) The executive director shall attend all meetings of the board.

68-221-1307.

(a) An authority has all powers necessary to accomplish the purposes of this part (excluding the power to levy and collect taxes. Such powers include, but are not limited to, the following:

(1) Have perpetual succession, sue and be sued, and adopt a corporate seal;

(2) Plan, establish, acquire, construct, improve and operate one (1) or more treatment works within or without the creating and participating governmental entities and within this state and within any adjoining state;

(3) Acquire real or personal property or any interest in property by gift, lease or purchase, for any of the purposes provided in this part; and to sell, lease or otherwise dispose of any such property;

(4) Enter into agreements with the creating governmental entity or with participating governmental entities, to acquire by lease, gift, purchase or otherwise, any treatment works, or property related thereto, of such governmental entity and operate such treatment works as a part of its treatment works; or enter into agreements with participating governmental entities providing for the operation by the authority of the treatment works, or any portion thereof, owned by any participating governmental entity;

(5) Enter into agreements with the creating governmental entity and participating governmental entities with respect to the manner of transfer of treatment works employees of such governmental entities to the authority, and with respect to the retention by such employees of accrued pension, disability, hospitalization and death benefits;

(6) Enter into, by contract with the creating governmental entity or otherwise, a plan for pension, disability, hospitalization and death benefits for the officers and employees of the authority;

(7) Make application directly to the proper federal, state, county and municipal officials and agencies, or to any other source, public or private, for loans, grants, guarantees or other financial assistance in aid of treatment works operated by it, and accept the same;

(8) Make studies and recommend to the appropriate commissions and legislative bodies of the creating and participating governmental entities, zoning changes in the area of any treatment works operated by the authority;

(9) Have control of its treatment works with the right and duty to establish and charge fees, rates and other

charges, as set out in this part, and collect revenues therefrom, not inconsistent with the rights of the holders of its bonds;

(10) Appoint an executive director, and acknowledge the executive director's staff appointments of a secretary, a treasurer, an auditor, legal counsel and a chief engineer; prescribe their duties and qualifications; and fix their compensation;

(11) Use in the performance of its functions the officers, agents, employees, services, property, facilities, records, equipment, rights and powers of the creating governmental entity or any participating governmental entity, with the consent of any such governmental entity, and subject to such terms and conditions as may be agreed upon;

(12) Enter such lands, waters or premises as in the judgment of the authority may be necessary for the purpose of making surveys, soundings, borings and examinations to accomplish any purpose authorized by this part, the authority to be liable for actual damage done;

(13) Designate an independent certified public accountant firm to do an annual post audit of all books, accounts and records of the authority and issue a public report thereon;

(14) Adopt by majority vote of the board the purchasing procedures for utility districts as defined in title 7, chapter 82, part 8; and

(15) Adopt by majority vote of the board, regulations, including, but not limited to, requirements for the posting of performance bonds and maintenance bonds, governing the operation and maintenance of nontraditional sewage disposal systems. The phrase "nontraditional sewage disposal systems" does not include subsurface sewage disposal systems that are subject to the permitting requirements of part 4 of this chapter, nor to wastewater collection and disposal systems that are owned or operated by a governmental entity. The provisions of the Water Quality Control Act, compiled in title 69, chapter 3, and regulations adopted thereunder, shall prevail over any such regulations of an authority in the event of a conflict; provided, that the authority may adopt regulations that are more stringent than the Water Quality Control Act and regulations promulgated thereunder, if a copy of such regulations is filed with the department.

(b) The commissioners, all appointed officers, and all personnel employed by the board of commissioners of any water and wastewater authority under this chapter, are prohibited from receiving any money or other goods or services of value of any sort as a result of any agreement, contractual or otherwise, for the installation of water and wastewater service within the bounds of the district; and further, such persons are also prohibited from receiving any moneys or other goods or services of value of any sort as a result of any agreement, contractual or otherwise, for the sale of any materials to be installed within the bounds of the district as water and wastewater service.

(c) Authorities shall provide information requested for the county growth plan to the county or counties in which they provide service. The plans, services, and projects of an authority shall be consistent with the relevant county growth plan.

68-221-1308.

(a) The authority may fix the price or charges for its water and waste treatment services rendered to users within and without the service area of the authority; provided, that the rates charged must be uniform for the same class of customers or service and may represent the equitable or proportionate share of treatment costs of such class of customers or service.

(b) In classifying customers served or service furnished by such system of sewerage or water, the authority may, in its discretion, consider any or all of the following factors:

(1) The difference in cost of service to the various customers;

(2) The location of the various customers within and without the service area of the authority;

(3) The difference in cost of maintenance, operation, repair and replacement of the various parts of the system;

(4) The different character of the service furnished various customers;

(5) The quantity and quality of the sewage delivered and the time of its delivery;

(6) Capital contributions made to the system, including, but not limited to, assessments; and

(7) Any other matters which present a reasonable difference as a ground for distinction.

(c)

(1) As used in this subsection (c), “sewer” means waste water collection and/or treatment.

(2)

(A) The board may enter into contracts with any utility district or municipality providing sewer services within the jurisdiction, or with any municipal utilities board or commission operating a water system within the jurisdiction of the authority, for the collection of sewer charges; and the authority, or any public corporation, utility district or municipal utilities board or commission so contracting with the authority or contracting directly with any public or private corporation providing sewer services within the jurisdiction, is authorized and empowered:

(i) To meter, bill and collect sewer service charges as an added designated item on its water service bills, or otherwise;

(ii) To discontinue water service to sewer users who fail or refuse to pay sewer service charges;

(iii) Not to accept payment of water service charges from any customer without receiving at the same time payment of any sewer service charges owed by such customer; and

(iv) Not to reestablish water service for any customer until such time as all past due sewer service charges owed by such customer have been paid.

(B) Such utility district or municipal utilities board or commission is authorized to perform all acts and discharge all obligations required by the provisions of any such contract or contracts.

68-221-1309.

(a)

(1) In providing a treatment works to treat industrial wastes, either independently or in conjunction with other

wastes, the authority has the authority to collect from such industrial users all or any part of the construction costs of such treatment works reasonably attributed to treatment of such industrial wastes.

(2) The apportionment of such costs shall be equitable as among industrial users, and such costs may be collected by assessment, connection fee, periodic charges, or in other manners or combinations thereof as in the judgment of the authority is equitable and will assure such industrial cost recovery.

(b)

(1) The commitment of an industrial user of waste treatment service to repay its share of industrial recovery costs may be assumed by another industry replacing the former as a user of waste treatment services; provided, that such assumption shall not release such original or former user without the written consent of the agency, which consent shall not be unreasonably withheld.

(2) The authority shall have the right to allocate and reallocate among industrial users the right to discharge industrial wastes into the treatment system.

(3) In the event of such reallocation, the share of industrial cost recovery of each participating industry shall be reallocated proportionately among all industrial users; provided, that the share of an industrial user may not be increased except in proportion to its increased use of the system.

68-221-1310.

(a) An authority has the power to condemn either the fee or such right, title, interest or easement in the property as the board may deem necessary for any of the purposes mentioned in this part, and such property or interest in such property may be so acquired whether or not the same is owned or held for public use by corporations, associations or persons having the power of eminent domain, or otherwise held or used for public purposes; provided, that such prior public use will not be interfered with by this use.

(b) Such power of condemnation may be exercised in the mode or method of procedure prescribed by title 29, chapter 17, or in the mode or method of procedure prescribed by any other applicable statutory provisions now in force or hereafter enacted for the exercise of the power of eminent domain.

68-221-1311.

(a)

(1) The authority has the power to issue negotiable bonds from time to time in order to accomplish any of the purposes authorized by this part, and it also has the power to issue bonds in the same manner and under the same provisions as municipalities or metropolitan governments or counties are empowered to issue bonds under the laws of this state, for the purposes authorized by this part.

(2) All such bonds shall be payable from all or any part of the revenues, income and charges of the authority and such bonds may also constitute an obligation of one (1) or more of the creating and participating governmental entities.

(b)

(1) The bonds shall be authorized by resolution of the board and shall bear such date, mature at such time or times, bear interest at such rate or rates payable annually or semiannually, be in such form and denominations, be subject to such terms of redemption with or without premium, carry such registration privileges, be payable in such medium and at such place or places, be executed in such manner, all as may be provided in the resolution authorizing the bonds.

(2) The bonds may be sold at public or private sale in such manner and for such amount as the board may determine.

(c) The resolution may include any covenants which are deemed necessary by the board to make such bonds secure and marketable, including, but not limited to, covenants regarding:

(1) The application of the bond proceeds;

(2) The pledging, application and securing of the revenues of the authority;

(3) The creation and maintenance of reserves;

(4) The investment of funds;

(5) The issuance of additional bonds;

(6) The maintenance of minimum fees, charges and rentals;

(7) The operation and maintenance of its treatment works;

(8) Insurance and insurance proceeds;

(9) Accounts and audits;

(10) The sale of treatment works properties;

(11) Remedies of bondholders;

(12) The vesting in a trustee or trustees such powers and rights as may be necessary to secure the bonds and the revenues and funds from which they are payable;

(13) The terms and conditions upon which bondholders may exercise their rights and remedies;

(14) The placement of lost, destroyed or mutilated bonds;

(15) The definition, consequences and remedies of an event of default;

(16) The amendment of such resolution; and

(17) The appointment of a receiver in the event of a default.

(d) Any holder of any such bonds, including any trustee for any bondholders, may enforce their rights against the authority, its board or any officer, agent or employee thereof by mandamus, injunction or other action in any court of competent jurisdiction, subject to the covenants included in the bond resolution.

(e)

(1) Sums received as accrued interest from the sale of any bonds may be applied to the payment of interest on such bonds.

(2) All sums received as principal or premium from such sale shall be applied to the purpose for which such bonds were issued, and may include, but without limitation, expenses for fiscal, legal, engineering and architectural services, expenses for the authorization, sale and issuance of the bonds, expenses for obtaining an economic feasibility survey in connection with such bonds, and to

create a reserve for the payment of not exceeding one (1) year's interest on such bonds.

(f) Bonds issued pursuant to this part executed by officers in office on the date of such execution shall be valid obligations of the authority, notwithstanding that before the delivery thereof, any or all of the persons executing the bonds shall have ceased to be such officers.

(g) Bonds issued pursuant to this part, and the income therefrom, shall be exempt from all state, county and municipal taxation except inheritance, transfer and estate taxes.

(h) All public officers and bodies of the state, municipal corporations, political subdivisions, all insurance companies and associations, all savings banks and savings institutions, including savings and loan associations, all executors, administrators, guardians, trustees, and all other fiduciaries in the state may legally invest funds within their control in bonds of an authority.

(i) Any bonds issued for the purpose of financing the cost of the establishment, construction, installation, acquisition, extension or improvement of any treatment works, as defined by § 68-221-603, which are to be the joint obligations of the authority and any creating governmental entity, or participating governmental entity, shall be authorized and issued by such governmental entity in the form and manner prescribed by the applicable provisions of title 5, chapter 11 [repealed] and title 7, chapter 36 [repealed], and the construction, installation, acquisition, extension or improvement of any treatment works shall be deemed to be a public works project, as defined in title 5, chapter 11 [repealed] and title 7, chapter 36 [repealed]. To the extent any of the provisions of title 5, chapter 11 [repealed] and title 7, chapter 36 [repealed], relating to the terms and conditions of any bonds so issued, conflict with the provisions of this section, the provisions of the former shall prevail.

(j) Any bonds upon which any creating governmental entity, or participating governmental entity, is jointly obligated with the authority may be secured by the full faith and credit and taxing powers of such governmental entity as provided in the chapters cited herein.

68-221-1312.

(a)

(1) Notwithstanding any other provisions of the laws of this state or any of its political subdivisions, any authority that has contracted for and accepted an offer or a grant of federal or state aid, or both, for a particular project

for which the authority may raise or expend money, may, upon resolution of its board, incur indebtedness in anticipation of the receipt of such aid for the particular project by issuing its general obligation notes payable in not more than one (1) year, which notes may be renewed from time to time by the issue of other notes; provided, that no notes shall be issued or renewed in an amount which at the time of such issuance or renewal exceeds the unpaid amount of the federal or state aid or both in anticipation of which such notes are issued or renewed.

(2) To any extent that the federal or state aid in anticipation of which the notes were issued when received exceeds the amount of such aid remaining to be paid under contract or accepted offer, plus the amount of any outstanding notes issued in anticipation thereof, it shall be kept in a separate account and used solely for the payment of such outstanding notes.

(b) Every authority has the power and is authorized to:

(1) Sell bonds at private sale to any federal agency without any public advertisement;

(2) Issue interim receipts, certificates or other temporary obligations, in such form and containing such terms, conditions and provisions as the authority issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project; and

(3)

(A) Issue bond anticipation notes in anticipation of the sale of bonds which have been duly authorized, but all such bond anticipation notes, including any renewals thereof, shall finally mature not later than three (3) years from the date of the original notes.

(B) All such bond anticipation notes shall have the same security as the bonds in anticipation of which such notes are issued.

68-221-1313.

Any creating governmental entity and any participating governmental entity has all necessary powers in order to further the purposes of this part, including, without limitation, the following, any or all of which powers may be exercised by resolution of its governing body, to:

(1) To advance, donate or lend money on real or personal property to the authority;

(2) To provide that any funds on hand or to become available to it for treatment works purposes shall be paid directly to the authority;

(3) To sell, lease, dedicate, donate or otherwise convey to the authority any of its interest in any existing treatment works or other related property, or grant easements, licenses or other rights or privileges therein to the authority;

(4) To enter into agreements with the authority with regard to the transfer of its treatment works' employees to the authority with the retention by such employees of any accrued rights in pension, disability, hospitalization and death benefits; and

(5) To permit its rights, duties and powers under its charter or the laws of the state to be performed or exercised by the authority.

68-221-1314.

(a) Whenever the governing bodies of the creating governmental entity and the participating governmental entities each, by resolution, determine that the purposes for which the authority was created have been substantially accomplished, that all of the bonds and other obligations of the authority have been fully paid, and that such governmental entities have agreed on the distribution of the funds and other properties of the authority, then the executive officers of such governmental entities shall execute and file for record with the secretary of state a joint certificate of dissolution reciting such facts and declaring the authority to be dissolved.

(b) Upon such filing, the authority shall be dissolved, and title to all funds and other properties of the authority at the time of such dissolution shall vest in and be delivered to such governmental entities in accordance with the terms of their agreement relating thereto.

68-221-1315.

(a) The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law, and are not in substitution for such powers, and the limitations imposed by this part shall not affect such powers.

(b) The powers herein granted may be exercised without regard to requirements, restrictions or procedural provisions contained in any other law or charter, except as expressly provided in this part.

(c) Any metropolitan government or any home rule municipality authorized under this part to create a water and wastewater treatment authority may do so without the necessity of a charter amendment, notwithstanding anything in its charter to the contrary.

68-221-1316.

The provisions of this part shall be liberally construed to effect the purposes hereof, and insofar as the provisions of this part may be inconsistent with the provisions of any other law, the provisions of this part shall be controlling.

68-221-1317.

The members of the board of commissioners may receive compensation for their services and shall receive per diem or reimbursement for necessary expenses.

§ 68-221-1318. The national policy in favor of competition shall ensure a policy of competitive bidding for all authorities. An authority shall be subject to the applicable purchasing laws of the creating governmental entity or if two (2) or more creating governmental entities form a water & wastewater treatment authority than an authority shall be subject to the county purchasing law of 1981.

68-221-1319. No water and wastewater treatment authority created pursuant to this part after July 1, 2008 shall be located in more than one (1) county without the approval of the general assembly.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: May 10, 2007



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 24th day of May 2007



PHIL BREDESEN, GOVERNOR